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CLEARINGHOUSE RULE 95-219

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

a. Section 977.02 (4r), Stats., requires the Public Defender Board to establish procedures to provide the Department of Administration with any information concerning the collection of a payment for public defender representation. Does s. PD 6.06 require the State Public Defender to provide *any* information concerning the collection?

b. Section 977.075 (1) (intro.), Stats., requires the Public Defender Board to establish by rule fixed amounts as flat payments for the cost of representation. Section 977.075 (3), Stats., requires the board to establish by rule a fee schedule that sets the amount that a person who does not pay the fixed amount must otherwise pay. The rule-making order does not establish either the fixed amounts or the fee schedule.

2. Form, Style and Placement in Administrative Code

a. In s. PD 6.015, "sec. 977.075, Stats." should read "s. 977.075, Stats."

b. In s. PD 6.025 (2), the drafter may wish to consider ending each paragraph with a period instead of a semicolon and deleting "or," from par. (c) to facilitate inserting and deleting paragraphs in the future.

4. Adequacy of References to Related Statutes, Rules and Forms

The analysis cites ss. 977.02 (4r) and 977.07 (2m), Stats., as bases for the rule. The Public Defender Board should review the amendments to these statutory provisions made by 1995 Wisconsin Act 77 and amend the rule accordingly.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section PD 6.015 would be clearer if it were divided into subsections. The material up to the colon could be sub. (1) and the items describing the persons subject to repayment could each be placed in a paragraph. The last sentence could be sub. (2). Also, “the maximum amount under the applicable fee schedule” is vague. The phrase could be modified to read “the maximum amount the person may be required to pay under the applicable fee schedule.” Finally, “client” should be changed to “person” to be consistent with the rest of the chapter.

b. In s. PD 6.025 (1), the first sentence is wordy. It may be clearer as “The state public defender shall determine whether persons subject to repayment of attorney costs have the ability to pay all, or part of, the costs of representation.”

c. Section PD 6.025 (1) and (2) (b) refer to the “cost of living.” What is the meaning of this phrase? [See ss. PD 3.03 and 3.038 regarding the determination of indigency and partial indigency.]

d. Section PD 6.025 (2) may be clearer if it refers to “a person” instead of “persons” since the determinations are made on a case-by-case basis.

e. Section PD 6.025 (2) (c) should specify the period of time in which a person must notify the State Public Defender that he or she is unable to pay the specified periodic payments.

f. Section PD 6.025 (2) (d) appears to state that if the person complied with one request, but no others, that person may not be determined able to pay. Should the paragraph read that if a person has not complied with a request, that person may be determined able to pay?

g. Section PD 6.06 is awkward. The section may be clearer as “The state public defender shall refer to the department of administration a collection account of a person who has been determined able to pay and has not paid the optional prepayment amount if the person has been given a monthly payment schedule and has missed a monthly payment by more than 10 days.”

h. Section PD 6.07 is awkward. The section may be clearer as “The state public defender may not provide representation to a person who is seeking a court order to adjust the repayment amount owed to the state public defender.”